

**EXCERPT FROM  
TUOLUMNE COUNTY PLANNING COMMISSION MEETING  
MINUTES**

**January 20, 2016**

**PRESENT:** Chairman Dick Pland, Vice Chairman Jerry Baker and Commissioners Charlotte Frazier, Cole Przybyla, Peter Rei, John LaTorre (via teleconference) and Peggy Mosley (via teleconference)

**ABSENT:** None

**STAFF:** Bev Shane, Community Resources Director, Sarah Carillo, County Counsel, Carlyn Drivdahl, County Counsel, Bill Pooley, Sheriff's Office, Eric Erhardt, Sheriff Lieutenant, and Karen Willenberg, Office Supervisor

**MEDICAL MARIJUANA ORDINANCE,** Ordinance amending the Tuolumne County Ordinance Code by adding a new Chapter 17.67 to establish regulations for limited medical marijuana cultivation by qualified patients and primary caregivers.

Chairman Pland opened the public hearing and outlined the procedures. He asked if any Commissioners had anything to announce. Hearing no one, he asked staff to describe the project.

Ms. Shane said that on January 15, 2014, the Commission heard a different ordinance, which proposed to clarify the County's current provision in the zoning ordinance that all cultivation and distribution of medical marijuana were prohibited. The Planning Commission recommended to the Board of Supervisors that it was premature to adopt the ordinance and that it should be sent to a task force to consider any ballot measures that were being proposed at that time. She said that in 1996, the voters of the State of California passed the Compassionate Use Act of 1996, which allowed the use of medical marijuana to insure that seriously ill Californians have the right to obtain and use marijuana for medical purposes provided that they have a recommendation from a physician and that they would not be prosecuted or sanctioned for such use. She said that in the interim there have been bills passed by the State that clarify provisions of that act and in 2015, there were three bills passed that are entitled "The Medical Marijuana Regulation and Safety Act." She said that County Counsel is present to answer questions about those bills. She advised that the bills require permitting from the State, but local jurisdictions still have the right to regulate cultivation and distribution of medical marijuana in their communities.

Ms. Shane said that Tuolumne County's zoning ordinance does not currently allow for cultivation or distribution of medical marijuana through a provision that says that a use must be expressly allowed or it is not allowed. She said that our ordinance does not provide for such uses and, therefore, they are prohibited at this time. County Counsel gave a presentation to the Board of Supervisors on the bills that were passed by the legislature and signed by the Governor this fall and advised that there are deadlines for local jurisdictions to adopt regulations or cultivation of medical marijuana would be subject to State law. She said that the Board of Supervisors directed County Counsel to prepare an ordinance to amend the zoning ordinance to establish regulations regarding cultivation of medical marijuana. She said that the Commission reviews and considers changes to the zoning ordinance. She said that in giving the direction to

Counsel, the Board of Supervisors recognized the need for patients in the County to have access to medical marijuana and they wanted to provide for a reasonable number of plants that can be grown by the patients themselves or their caregivers. She said that the Board also wanted an ordinance that would address public nuisances that are associated with cultivation of medical marijuana, which include disagreeable odors, violation of building codes when grows are done inside, burglary and other property crimes, and acts of violence, which have happened in our County. She said that the intent of the ordinance is to address those issues while allowing for reasonable cultivation of medical marijuana.

Ms. Shane said that another issue that the Board of Supervisors discussed is that there are several ballot measures that are being circulated right now that would allow not just medical but also recreational use of marijuana. She said that those measures, if they qualify for the November election, could affect any ordinance that is adopted by the Board of Supervisors. She said that while the Board of Supervisors directed that this ordinance be processed at this time, they also decided to create a task force, which was suggested by the Commission a couple of years ago. She said that the deadline is June 30, 2016, for the Secretary of State to determine which ballot measures, if any, do qualify. She said the task force will meet after it is determined which ballot measures qualify. She said that this ordinance may be an interim step or may be the final step, depending on the outcome of those measures.

Ms. Shane said that the ordinance has been drafted by County Counsel, was considered by the Board of Supervisors on January 5, 2016, and the Board of Supervisors referred it the Commission for public hearing. She said that the proposed ordinance would add a new Chapter 17.67 to the zoning ordinance, which would allow cultivation of up to six medical marijuana plants on a parcel, when one qualified patient or one primary caregiver resides on the parcel. She said that cultivation will be allowed for up to 12 plants when there are two or more qualified patients or caregivers living on the parcel, and cultivation can be indoors or outdoors. She said that outdoor cultivation cannot occur within 1,000 feet from schools, school evacuation sites, places of worship, public parks, licensed family day care homes/day care centers, or youth-oriented facilities. She said that an individual who is a tenant and not the owner of the parcel must obtain permission from the owner of the parcel in order to cultivate marijuana. She said that all outdoor cultivation must be fully enclosed by an opaque fence at least 6 feet in height and must be set back a minimum of 50 feet from the boundaries of the parcel upon which the cultivation is located. She said that these provisions are similar to those that are currently in effect in Mariposa County. She said that the County line between Mariposa County and Tuolumne County splits the Lake Don Pedro community and we have heard from concerned citizens in that area about cultivation in their community and that they felt that the Mariposa County ordinance had been effective on that side of the County line. She said the primary difference between the two ordinances is that Mariposa County allows 12 plants for one patient and 24 for two.

Ms. Shane said that this ordinance would also address enforcement, which will be the responsibility of the Code Compliance Officer, who is currently the Chief Building Official, with assistance from the County Sheriff. She said that the Sheriff's responsibility would be for protection and a deputy would escort the Code Compliance staff on site inspections. She said that there had been problems in the past with cultivation of medical marijuana and we want to make sure any staff charged with enforcement can do it in a safe manner.

Ms. Shane said that one issue you may hear from the audience tonight is that six plants are not enough. She said that the County Health Officer, Dr. Liza Ortiz, has stated that medical marijuana is readily available. She said that if a patient does not want to grow it or six plants is

not enough, medical marijuana can be purchased through dispensaries located in neighboring counties or ordered over the Internet or telephone and be delivered.

Ms. Shane noted that Deputy County Counsel Carlyn Drivdahl, County Counsel Sarah Carrillo, and Undersheriff Bill Pooley and Lieutenant Eric Erhardt from the Sheriff's Office are here to answer questions.

Ms. Shane said that she received an e-mail from Sally Miller who lives in the Lake Don Pedro community with information regarding a grow that did occur in that community. She said Ms. Miller could not be present at this meeting but has provided photographs for everyone to view on the wall.

Chairman Pland asked if this ordinance would make dispensaries moot.

Ms. Shane said that the proposed ordinance does not address dispensaries and under the current zoning ordinance they are prohibited in Tuolumne County.

Vice-Chairman Baker referred to page 8 of the Agenda Report and asked if violations would be complaint driven, with Code Compliance performing the enforcement.

Ms. Shane said that Code Compliance provisions are in Chapter 1.10 of the County Ordinance Code and there will be modifications to that Chapter to address the matter.

Carlyn Drivdahl, Deputy County Counsel, said that under Title 17, the enforcement is the responsibility of the Community Resources Agency through the Code Compliance process established in Chapter 1.10. She said that the Board of Supervisors wanted the enforcement to be handled by the Code Compliance Officer with support from the Sheriff's Office. She said that the violation would be complaint driven, so if there is not a complaint submitted, there would be no action. She added that Mr. Oliver did not have time to go out looking for code Compliance cases.

Commissioner Rei asked if there was a reason why Code Compliance staff would be handling enforcement instead of the Sheriff's Office.

Sarah Carrillo, County Counsel, said that there was discussion at the Board of Supervisors level about whether the Sheriff's Office should take the lead. She said that when the Sheriff's Office takes the lead in a civil administrative matter, the legal burden changes. She said that the Board of Supervisors decided it would be better to allow Code Compliance staff to take the lead to retain the legal burden we are used to dealing with and an appeal would still go to the Board of Supervisors. She said that there is some case law about not making this a criminal matter and it will be a civil process.

Commissioner Rei said that he lived in Humboldt County for 22 years and plants can grow to well over six feet high and asked why the fence was only required to be six feet high.

Ms. Drivdahl said that six feet was chosen because that is what Mariposa County has in its ordinance. She said that they have evidence that the six foot fences were working well and the Board of Supervisors wanted regulations put in place to allow a small amount of cultivation as a base. She said that when the task force begins its work, it can address those types of issues.

Commissioner Rei asked what effect this ordinance would have on Ms. Miller's concern with large illegal grows.

Ms. Drivdahl said it would provide more tools to address each violation. She said that the grow that Ms. Miller has referenced is on a vacant lot and one of the requirements of the ordinance is that if you are going to grow medical marijuana, you must live there.

Chairman Pland opened the public hearing and asked if there was anyone who wished to speak in favor of the project. He announced there would be a three minute time limit for each speaker.

Tom Johnson introduced himself and said that he looked at the photographs on the wall of the large grow and wished that anybody else was his neighbor instead of this large grow operation. He said that he is not against small grows of six plants for those that have a card and that they grow it on their own property, but he is against the large growers who claim to be farmers. He said he is tired of picking up empty fertilizer sacks and other debris that blow onto his property. He said that water is draining into Lake Don Pedro and he wonders if San Francisco realizes they are drinking water that ran through that fertilizer. He said that the violators have been caught stealing water. He said that because of the armed guards on this large grow site, people are afraid to report this activity. He said that he used to walk the equestrian trail every day but does not go near there now because if he gets within ten feet of their plants, there is an armed guard protecting the grow. He said that at the end of the grow season when he is in his bedroom, the smell burns his eyes. He complained that there is a 45 minute response time if you call the Sheriff. He said he is considering obtaining a concealed weapon permit and he is also concerned for school children.

Ruth Smith introduced herself as a resident of the Lake Don Pedro area and said her neighbor was advised by the Sheriff's Office to stay away from his property line that borders the large grow. She said that the growers camp under an oak tree in a tent with no septic system. She said that she had called the Health Department and the Sheriff's Office, but they have provided no help. She said the growers have not shot at anyone yet, but they shoot to let everyone know they are armed. She said that there has been an increase in home invasions in the area and mentioned the problems in Calaveras County. She said that an article in today's edition of the Modesto Bee newspaper reported that Stanislaus County will be tightening its medical marijuana ordinance before the March 1<sup>st</sup> deadline. She said that she has no problem with a few plants growing for medical purposes where it is legal, but this large 250 plant grow is not medical marijuana and it is not legal. She said that there are schools in the area as well as pedestrian and equestrian trails and when you cannot walk these or enjoy your own property, it is getting sad.

Dan Hankmeyer introduced himself and asked for clarification why the State law would make the County adopt a new ruling.

Ms. Carrillo said that the three bills that were passed and went into effect January 1, 2016, have a provision that if local jurisdictions do not have an ordinance on the books regarding cultivation by March 1, 2016, the State would preempt the local jurisdiction. She said that there are efforts in the legislature that would repeal that March 1<sup>st</sup> deadline, but as of today, it stands. She said that is why you will see a lot of jurisdictions making efforts to address cultivation.

Mr. Hankmeyer said that this large grow pays no taxes. He said that if these people are going to grow this stuff, they should pay taxes. He said that the school kids walk by this grow and think it is funny, but it is not funny because these people have weapons and kids are in danger. He said that if the Sheriff's Office is not responsible for enforcing, who are we going to call to make sure this violation is enforced.

Chairman Pland said that the Code Compliance staff would handle the violation.

Mr. Hankmeyer said he is not convinced that the Code Compliance staff will do the same thing the Sheriff will do.

Chairman Pland said that the staff report mentioned that if there is an issue, a Deputy Sheriff would go with the Code Compliance staff.

Mr. Hankmeyer said that he was in favor of this ordinance.

Commissioner Rei asked Counsel to explain the State regulations.

Ms. Drivdahl said that the legislation requires State agencies to develop regulations for medical marijuana by January 1, 2018. She commented that there are no State regulations at this time.

Ms. Carrillo reported that she was at the State Assembly yesterday on this issue and heard from three of the State agencies that are developing these regulations, Department of Food and Agriculture, Health Department, and the Department of Consumer Affairs, and they all agreed that there may not be regulations in place by the January 1, 2018 deadline.

Dan Johnson introduced himself as a resident of the Lake Don Pedro community and said that if a neighbor gets hurt, what liability does the County have for protecting residents when they have been notified of the illegal activity.

Ms. Carrillo responded that she had been in contact with Ms. Miller about the Don Pedro issue and that in terms of County liability, if something happens to a resident as a result of an illegal activity, it would be a criminal matter. She said that this ordinance and process provide for the County and the Sheriff to work together to avoid this situation.

Mr. Johnson asked the Commissioners to think about supporting the ordinance because a large grow could be in their back yards.

Chairman Pland asked if there was anyone else who wished to speak in favor of the project. Seeing no one, he asked if anyone wished to speak in opposition to the project.

Brian Bradford introduced himself as a local patient and grower and said that he would not want that large Don Pedro illegal grow behind his house either. He said that he agreed with the ordinance but is concerned that there is no sunset date. He said that he was in favor of Mariposa County's rules but did not like the Tuolumne County proposal of 6 plants per person compared to 12. He said that there was no differentiation made between indoor and outdoor growing and said indoor was hard to do with just 6 plants and outdoor plants get taller than 6 feet so a 6 foot fence would be more effective with 12 smaller plants instead of 6 large plants. He requested that the Commission not be hasty in adopting an ordinance to address the problems in Don Pedro and take the time to consider the appropriate number of plants to allow. He said that most medical marijuana growers do not have anything to do with the people growing large numbers of plants and camping under trees. He said that is an illegal activity and not what he is doing at his house. He said that he is respectful of his neighbors, does not grow over six plants, and he appreciates the civic process and the open conversation.

Lauren Hurley introduced herself and said that she was both in favor and opposition. Pointing to the pictures posted on the wall of the large grow, she told the residents of the Lake Don Pedro community that this is not a normal grow for a medical marijuana patient. She said that

she wants good regulation with people responsible for what they are doing. She said that Tuolumne County is an agricultural county and she does not want to see medical marijuana limited because of these large grows, where enforcement should be done. She said she thought Mariposa County set a good example and was more realistic of what should be allowed. She said that the 50 foot setback is unreasonable and would make it impossible for some people to grow at all. She said that up to six patients growing on one parcel is more common due to the limitations on smaller parcels with fences and setbacks. She said that people are becoming more open minded as to where the state and nation are going with cannabis. She asked the Commission to consider allowing responsible large grows which could generate tax revenue for the County.

John Simonian introduced himself and said he sympathized with the people who have to deal with the illegal large grows. He said that he does not do that and it was illegal and not respectful of the law or the environment. He said that the plant limit in the ordinance was too small, and he could not grow enough for himself and his wife with only 6 plants each allowed. He said that he would be forced to grow inside. He said that there were one million households each year growing inside which use electricity. He said there were environmental consequences to think about and costs of growing indoors with electricity, special lights, special equipment and having a dedicated space in your house which creates fire hazards. He said that the sun is free and we live in an agricultural county. He said he is concerned that the Sheriff is not doing anything with those people walking around with guns. He said that there is proposed State legislation that will allow 100 square feet of canopy with no plant count and allow a maximum of 5 people per co-op. He said that was a compromise position and for us to go even lower to 6 plants and 12 total in a household was not reasonable. He said that he has given his medical records to the County Health Officer and they sent his medical records to the State to review. He said that the State issued a card to him that is not based on plant numbers. He said that he has seen the same doctor for twenty years and his health continues to get worse as time goes on, so he smokes more and more medical marijuana. He would like the Commission to consider going back to the default of the State or the reasonable number that Mariposa County uses with 12 and 24 plants.

Chairman Pland asked Mr. Simonian if he were writing the ordinance, how many plants would he allow.

Mr. Simonian said that agriculture is hard to predict because you could have a good year and a bad year. He asked the Commissioners if they were to grow tomatoes, would 6 plants be enough to last a year if you ate tomatoes every day. He said that Mariposa County's 12 and 24 plants are more reasonable numbers and the ordinance should allow 4 scripts per household.

Jeff Craft introduced himself as a resident of Tuolumne County for 26 years and said he was a local contractor and a member of Americans for Safe Access. He said that the problems are a direct result of a lack of regulations in the County. He presented a binder of information from the Americans for Safe Access to review. He said that there should be taxable regulations for the medical cannabis industry and this information will help guide industry professionals and cannabis advocates, patients, concerned citizens, and the policy makers to make the best decision for regulating medical cannabis for our community. He requested that the information be shared with the ad hoc committee that is to form later in the year. (The binder of information that Mr. Craft presented to the Commission is available for review at the Office of County Counsel.)

A speaker said he has been a resident of Tuolumne County since 2000 and that he was a tax paying citizen, a grower, and a cancer patient. He apologized to the residents of Don Pedro for

the large illegal grow operated by the cartels or micro mafia. He said that they are not tax payers and are stealing water. He said that he pays his water and power bill, and he buys all products locally for his grow. He said that regulations are a good thing because some people will get out of hand with their growing. He said that you need to be able to regulate both indoor and outdoor growing. He said that he has seen pictures of marijuana plants that are ten feet high. He said that indoor plants are shorter and six plants are equal to one branch from one of the outdoor plants. He said that outdoor growers get from 1 to 10 pounds per plant while indoors you get 1 to 2 ounces per plant and even with 4 cycles a year, he still does not get what the outdoor grower will get with 2 plants total. He said that he would like the ordinance to allow an indoor grow be a 10 foot by 10 foot area, a normal size bedroom, instead of limiting the number of plants. He said that there still has to be room for a water tank and equipment. He said that the plants do not take up that much room for indoor but 6 is not enough because he could smoke that in a month. He said he would like to see the allowance for outdoor grows to be 12 plants per script, but indoor grows need to use a square footage.

Vice-Chairman Baker asked about the amount of power and clarification on lighting for indoor grows.

The speaker said that LED lighting is not as efficient as HID (High Intensity Discharge) lighting. He said that HID lights take up a lot of power, with 400 watts, 600 watts, and 1200 watts and for every 1000 watts he uses, it costs \$50 a month in power. He said that normal heaters use 1500 watts and cost about \$75 a month. He said that there is a growing cycle that lasts 18 hours on and 6 hours off for a short while and then you switch over to 12 hours on and 12 hours off cycle. He said that when the lights are off for 12 hours, he only has a dehumidifier keeping the temperature controlled. He said his power bills are high so he was considering solar but it is very expensive. He said that if there was a better ordinance in this County to help people get solar, then people would switch to solar. He said that he uses a recycled water system.

Kira Tucker introduced herself as Administrator for Tuolumne Cannabis Advocates and said she was in favor of the Mariposa County numbers and she believes the ad hoc committee came up with the 6 and 12 plant numbers. She is concerned that there is no sunset time provided. She said that in order to bridge the gap between the farmer's side of the fence and the rest of the community, rebuilding a sense of trust is important. She said that the working committee should draft a more refined ordinance that provides for dispensaries, not just for safe access, but to help the County pay for enforcement with sales tax on the medicine. She said that is the only point at which the County can collect tax on cannabis to help stop the "bad guys." She said she was sympathetic to the residents of the Lake Don Pedro community and stated that she wants more regulation. She said that the people that she knows want to pay taxes and come out of the shadows and be considered a part of the community. She thanked County Counsel for all their work.

Commissioner Rei asked Ms. Tucker about the lack of a sunset date and asked if November would make sense.

Ms. Tucker said that County Counsel should respond to that question.

Ms. Carrillo said that the intent is for the working group to start meeting in June. She said that she is not sure if the Board of Supervisors will include distribution in its direction to the working group. She said that it may take six months to a year for the working group to complete its task. She said that she does not recommend a sunset date.

Ms. Drivdahl said that once the working group comes forward with a recommendation to replace this proposed ordinance, it would go to the Board of Supervisors and then to the Planning Commission and then back to the Board for adoption. She said that if a sunset provision was in the ordinance, the working group's outcome could be a problem if it could not finish the work by that date and then we would go back to where we are now, where cultivation and distribution are banned under the principles of permissive zoning. She said that at its November 17<sup>th</sup> meeting, the Board of Supervisors was very interested in allowing some amount of personal cultivation now, instead of waiting for the working group to address the various issues. She said that this ordinance is intended to be temporary.

Tom Taylor introduced himself as a resident of Tuolumne County for 30 years. He said that he appreciates the public process with good conversations. He said that his biggest concern with this ordinance is the number of plants and lack of differentiation regarding indoor versus outdoor grows and the 50 foot distance from the property lines. He said that these restrictions create a lot of issues in terms of access for small home grows. He said that grows should not be limited by what size the property is or how much patients can afford if they are growing indoors. He said that they need access to their healthcare.

Chairman Pland asked if there was anyone else who wished to speak in opposition to the project. Seeing no one, he asked if anyone wished to speak neutrally on the project.

A speaker said that she has seen a huge shift in thinking from the first public hearing to the second public hearing when a great many participants in the medical marijuana process showed up, which she found rewarding. She said that there are some very articulate and well informed participants in the medical marijuana community who have contributed. She said that the task force should start now so they can be prepared, rather than waiting until June. She said that she agrees with the 12 and 24 plant numbers.

Chairman Pland asked if there was anyone else who wished to speak neutrally on the project. Seeing no one, he asked if anyone who had already spoken wished to speak in Rebuttal. Seeing no one, he advised that without Rebuttal, there can be no Surrebuttal and closed the public hearing and referred the item to the Commission for action.

Ms. Drivdahl said that there were a lot of comments about the numbers and questions about where they came from. She said that at the November 17<sup>th</sup> Board of Supervisors meeting, there was a lot of discussion about creating the working group now or getting an ordinance in place until the working group is able to get started. She said that Supervisors Brennan and Royce were assigned to work with staff to develop this ordinance, which was presented to the Board of Supervisors on January 5, 2016. She said that the numbers of 6 and 12 plants were proposed because of the wide range of parcel sizes from 2,600 square feet to hundreds of acres in the County. She said that those numbers were thought to be an appropriate initial balance between patient access and impacts to neighboring property pending additional consideration by the larger medical marijuana working group. She said that these numbers are also in line with similar marijuana cultivation regulations in other California jurisdictions. She said this is intended to be a starting point and, in the larger working group, those issues can be worked out.

Chairman Pland said that it reminded him of an ordinance proposed a year ago whereby the number of chickens was to be determined by the size of a parcel. On a small lot, you could have one or two chickens and on a larger lot, you could have more. He said that we have all learned about the difference between growing cannabis inside and outside. He said that two years ago we had a large number of people here when the original ordinance was limiting the growing to indoors. He said that he was convinced that it was not going to work because of the



power bills and fire hazards. He said that he learned that you cannot produce as many plants inside as you can outside. He said that he is concerned about how many plants it takes to produce enough medicine for someone for a year.

Chairman Pland asked Lieutenant Erhardt what he thought the right number should be to supply a person for a year.

Lieutenant Eric Erhardt introduced himself as a Narcotics Officer for the Sheriff's Office, and said that he had testified in court several times. He said that he had spoken to hundreds of patients and talked to numerous people who use medical marijuana who stay within the guidelines and the intent with the law and also those who abuse it. He said that the number of plants would depend on the usage and how good you are at growing it. He said that if you are producing plants that produce 10 pounds each, you could grow six plants to get you through the year. He said a marijuana cigarette could be ½ gram to one (1) gram each and compared to a typical cigarette, you would not smoke a pack a day. He said that the effects of marijuana could last between two to six or eight hours depending on the quality you are smoking. He said that people are not typically dosing every hour or couple of hours or every single day. He said that there are a lot of variables involved and coming up with a hard number that will work for everybody is difficult.

Commissioner Frazier asked for the average time of the growth cycle, from beginning to the final product.

Mr. Erhardt said that it varies on whether you are growing indoors or outdoors. He said that with indoor growing, you have the benefit of controlling your environment, whereby one can adjust the time and shorten the light cycles. He said that to start producing the THC (tetrahydrocannabinol) you go from an 18 hour light cycle to a 12 hour cycle. He said that it is a matter of getting the female plant to attract more male plants but you keep the male plants out of the area so that it will produce more THC to attract more. He said that if you are growing indoors, you can shorten it down to 60 days and for outdoors, you can grow anywhere from 90 to 120 days. He said that there is a stage where the plant is either cloning or growing from seed and then a vegetative or flowering state where it starts producing that THC, to produce the usual bud they refer to.

Commissioner Rei said that he was sensitive to the last speaker regarding the 50 foot setback because there are certain things you can do with a two acre parcel that you cannot do with a smaller parcel. He asked if this can be revised because a person on a one-quarter acre lot would have a hard time getting a 50 foot setback clearance. He said that some folks are not making a ton of money and he would like to find a way to address the issue.

Ms. Drivdahl said that those issues can be worked out in the larger working group. She said that the chicken ordinance is an excellent comparison because on a small lot you have a smaller amount of chickens allowed. She wanted to encourage the Commission to remember that this is a land use ordinance that needs to address impacts to neighboring properties.

Ms. Carrillo said that she met with the Board of Supervisors three times on this issue, with the shortest of those meetings being three hours long. She said that the issues discussed were complex and not easy. She said that Supervisor Royce tried to address those issues, but it was very complicated and there needs to be more time to dig into these issues and address what is fair to those that want to grow while being fair to their neighbors. She said that County Counsel cannot take credit for drafting the ordinance that Supervisors Brennan and Royce had created. She said that they are trying to meet the deadline.

Commissioner Rei said that if it takes a while to do that, you are going to create a situation with someone who has a larger parcel with no limitation, except the 50 foot setback, and someone with a smaller parcel who is prevented from growing outdoors if they do not have the setback allowance.

Ms. Carrillo said that was true but there are always indoor grows and access to mobile deliveries. She reiterated that it was an interim ordinance and the issues are very complicated and the Board of Supervisors wants to move forward to get something on the books now.

Ms. Shane said that if the Commission makes a recommendation to the Board of Supervisors, it can suggest that the task force look into having a sliding scale or setting standards based on parcel size so someone with a very small parcel who would like to grow a few plants outdoors is not disenfranchised.

Vice-Chairman Baker said that an indoor grow has energy problems, but it will get better with technology. He said that from a neighbor's point of view, indoor would be better because your neighbors would not know you are growing marijuana. He said that the Commission was better off making the indoor piece beneficial by leveling the playing field. He would like to encourage the indoor growth to limit the impact on the neighbors.

Commissioner Mosley said that there was a significant potential for a ballot measure this year. She asked if the County passes this ordinance, what would happen if that ballot measure goes through.

Ms. Carrillo said that we do not know the exact language of any ballot measure and what it will do to recreational use of marijuana. She explained that it may remove certain powers that local governments have to regulate recreational use of marijuana. She said that is part of the reason to wait to start the working group is to couple medical marijuana use and recreational marijuana use. She said it is unclear what would happen at this point.

Commissioner Mosley asked if the ballot measure would be recreational use as opposed to medical marijuana use.

Ms. Carrillo said that medical marijuana use has already been approved in California.

Chairman Pland suggested that the proposed 50 foot setback be reduced to 25 feet and add a 10 foot by 10 foot area for indoor grows.

Vice-Chairman Baker said that as long as it was just a couple of things changing, he would be okay with that.

Commissioner Rei said that he agreed with the changes that Chairman Pland suggested. He said that he would like to make it work now, knowing the ordinance will be changed later anyway.

Commissioner LaTorre asked for clarification on the two modifications mentioned.

Chairman Pland repeated the modifications and added that there would still be a six foot fence for outdoor grows.

Commissioner LaTorre said that he was in favor of allowing a 10' x 10' inside grow area and changing the setback to 25 feet. He said that he was in favor of providing regulations so law enforcement can keep us safe, but the proposed number of plants for medical marijuana users who actually need it are not reasonable and his preference would be to go with the ordinance in Mariposa County where the numbers are 12 and 24.

Commissioner Przybyla asked the previous speaker for clarification of what it would require to produce enough medical marijuana to meet his needs for a year.

The speaker said that there needs to be a differentiation between indoor and outdoor grows. He said that six plants are not enough because half of them could fail due to bugs or other problems. He said that you could regulate by pound rather than number of plants but that would be impossible to enforce. He said a 10 foot by 10 foot grow area is what should be allowed. He said that 12 plants and 24 plants should be allowed for outdoors. He said you could say that if you grow outdoors, then you cannot grow indoors. He said that he is forced to grow indoors, and that outdoors is not an option for him.

Vice-Chairman Baker suggested making two modifications to the ordinance by changing the indoor area to 100 square feet instead of 10 feet by 10 feet, and reducing the setback from 50 feet to 25 feet.

Ms. Drivdahl asked if they were looking at keeping the plant numbers of 6 and 12.

Commissioner LaTorre said that he likes the two changes but would like to see a third change to 12 and 24 plants because he does not think that we need to go so low to regulate the problem. He said that we are actually creating problems for the legal growers by only allowing 6 and 12 plants. He proposed 100 square feet of indoor grow area, a 25 foot setback, and 12 and 24 plants outdoors.

Ms. Shane explained that the Commission would be making a recommendation to the Board of Supervisors. She said that the proposed ordinance currently says 6 plants per parcel and asked the Commission to clarify if by also providing for a 100 square foot area for indoor grows, would it be an either/or or a combination of the two on a parcel.

Chairman Pland said that most people are going to grow outdoors because it is more efficient but if they cannot grow outdoors then they have to grow inside, which is less efficient and more costly. He wondered if they would try to do both.

Commissioner LaTorre said that the reason for going to 100 square feet indoors is that there would be no plant number limit.

Vice-Chairman Baker told Commissioner LaTorre that the question was if it was "and" or "or."

Commissioner LaTorre said that a 100 square foot grow space indoors creates little or no public nuisance or health hazard so he supports allowing any parcel to grow 12/24 plants outdoors if they meet the setbacks and have fencing and also allowing 100 square feet of growing area indoors. He said that he is proposing "and" instead of "or". He asked for the Commissioners to take a poll if they agree with the 12 and 24 plants.

The poll of the Commissioners relating to the 12 and 24 plants was supported by Chairman Pland, Vice-Chairman Baker, and Commissioners Rei, Frazier, Przybyla, Mosley, and LaTorre.

Commissioner Mosley said that she preferred “or” instead of “and.”

Chairman Pland said that the majority of the Commissioners want “and.”

It was moved by Commissioner Rei and seconded by Commissioner LaTorre to recommend approval of the proposed ordinance based on Findings A through Z, with the following modifications:

1. Modify Section 17.67.050(A) to increase the number of plants that a qualified patient or primary caregiver residing on a parcel may cultivate outdoors from six (6) to twelve (12) and increase the number of plants that two or more qualified patients or primary caregivers residing on a parcel may cultivate outdoors from twelve (12) to twenty-four (24).
2. Modify Section 17.67.050(A) to allow indoor cultivation of medical marijuana in an area that is no larger than one (100) square feet per parcel in addition to the number of plants allowed to be cultivated outdoors as referenced above.
3. Modify Section 17.67.050(C)(3) to reduce the required setback from the outdoor area in which medical marijuana is cultivated from 50 feet to 25 feet from the parcel boundary.

Chairman Pland asked staff to restate the motion.

Ms. Shane repeated the motion made by Commissioner Rei to recommend approval of the proposed ordinance to the Board of Supervisors with three changes. The changes are to modify the ordinance to allow 12 plants per patient on a parcel for outdoor cultivation and 24 plants for two or more patients or caregivers on a parcel and also 100 square feet of indoor cultivation and to reduce the setback for outdoor cultivation from 50 feet to 25 feet.

Vice-Chairman Baker said that this increases the incentive to grow indoors and a lot of people will be uncomfortable with marijuana plants growing next door to them, but with indoor the problem goes away. He said he understands that indoors has a lot of negative connotations from a business point of view, but it is making it easier from an incentive point of view. He said that he wants the Board of Supervisors to understand the incentive in coming up with the 100 square feet of indoor grow area.

Commissioner Rei said that he understands there will be some people unhappy with the 25 foot outdoor setback but it does make it easier for some and he hopes it is enough.

Chairman Pland said that this ordinance is intended to be temporary and could be back before the Commission in six months.

Vice-Chairman Baker said that the effectiveness of this and the next version of the ordinance is largely dependent on this community and how they react. He said that people will either be really glad this regulation is in place or really unhappy and the regulation’s success will depend on how it is dealt with by the growers. He said that a lot of self-regulation would go a long way.

Chairman Pland called for the vote and asked staff to call the roll.

Ms. Shane conducted the roll call:

Commissioner Rei – Aye  
Vice-Chairman Baker – Aye  
Chairman Pland – Aye  
Commissioner Frazier - Aye  
Commissioner Przybyla - Aye  
Commissioner LaTorre - Aye  
Commissioner Mosley - Aye

Motion carried 7 - 0 – 0, with Commissioners LaTorre and Mosley voting via teleconference.

Chairman Pland thanked the audience for working with the Commission and said it was a good process and win, lose or draw, we followed the rules.

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